

## CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)

### STAFF REPORT

**ISSUE:** Staff requests approval of amendments to the I-Bank's Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities to replace the strict prohibition against issuing bonds for projects that another State of California conduit issuer is "specifically created to finance" with a policy of avoiding the duplication, inefficiency, market confusion and poor policy outcomes that would result from State of California conduit revenue bond issuers competing to issue bonds to finance the same project or similar projects, and a process for the application of this policy involving coordination and consultation between the Executive Director of the I-Bank and the executive director of the other applicable State conduit revenue bond issuer.

The proposed amendments are reflected in the "Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities" attached hereto as **Attachment 1**.

**BACKGROUND:** The Bergeson-Peace Infrastructure and Economic Development Bank Act (Act) requires the I-Bank Board to adopt procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities (Government Code section 63044).

In response to this requirement, and to otherwise set forth policies of the I-Bank Board pertaining to the issuance of conduit revenue bonds to finance economic development facilities, the I-Bank Board adopted "Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities" (Policies)<sup>1</sup> in January of 1999, pursuant to Resolution 99-03. The Policies were subsequently clarified by non-resolution actions of the Board in August of 2008 and again in August of 2009.

**The Purpose of the "Section I.B Policy."** Section I.B. of the Policies was adopted in 1999, and was not subject to the 2008 or 2009 clarifications. It reads as follows:

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<sup>1</sup> By their terms, these Policies apply only to the financing of economic development facilities. In general, "economic development facilities" are facilities sponsored primarily by non-governmental entities for industrial, recreational, research, commercial, utility service enterprise, community, educational, cultural or social welfare facilities or any combination thereof. Conduit bonds issued to finance the other type of project that can be financed by the I-Bank -- a public development facility project -- must adhere to "criteria, priorities and guidelines" established by the I-Bank unless exempted from that requirement by the Legislature.



“The Infrastructure Bank will not issue Bonds for projects that another State of California conduit issuer was specifically created to finance. For example, the Infrastructure Bank will not issue Bonds for health facilities that are eligible for financing from the California Health Facilities Financing Authority or pollution control projects that are eligible for financing from the California Pollution Control Financing Authority.” (Section I.B. Policy)

The minutes and staff reports pertaining to the adoption of the Policies in 1999 do not explain the intention behind the Section I.B. Policy. That staff report and Resolution 99-03 are attached hereto as **Attachment 2**. However, I-Bank staff believes that the Section I.B. Policy was adopted for the following reasons:

- to avoid the duplication and inefficiency created by having multiple State conduit issuers with overlapping priorities;
- to permit the staff of State conduit issuer entities that have a more targeted purpose to obtain and exercise expertise in the particular field (e.g., healthcare; private post-secondary education; etc.); and,
- to recognize that the I-Bank has not consistently had the staffing capacity to take on the numerous financings that can also be done by other State conduit financing entities.

**Application of the Section I.B. Policy.** When faced with an application for or pre-application contact seeking information about I-Bank’s ability to finance an economic development facility project that appears to fall within the authority of another State conduit issuer, I-Bank staff makes informal contact with the staff of the other State conduit issuer to determine whether that issuer has the authority to issue bonds to finance the project. Often, there are reasons that the other State conduit issuer cannot issue the bonds due to quirks of the transaction or limitations imposed on the issuer by the Legislature. For example, the borrower may not meet all the requirements of the other State conduit issuer’s statutes, regulations or adopted policies.<sup>2</sup> In such an instance, upon confirmation of the fact that the proposed transaction falls outside of the scope of the other State conduit issuer’s authority, I-Bank staff has proceeded with processing the application for the issuance of bonds by the I-Bank.

Alternatively, when the discussion has confirmed that the other State conduit issuer has the authority to issue bond to finance the project, in most instances the applicant or potential applicant will be directed to that State conduit revenue bond issuer. In other

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<sup>2</sup> One example is Pepperdine University, which does not meet the definition of a permitted borrower of the California Educational Facilities Authority because of a requirement by the university that its students participate in a program that appears to be education in the tenants of a religion. As a private degree-granting institution, the university’s financing otherwise would have fallen within the authority of the California Educational Facilities Authority.



limited circumstances, however, I-Bank staff has reached informal agreement with the staff of the other State conduit issuer to proceed with the application and, if the project is otherwise recommended to the I-Bank Board, to propose a waiver of the Section I.B. Policy.

**Waiver of the Section I.B. Policy.** The Section I.B. Policy is not required by the Act. As such, the Section I.B. Policy may be waived by the I-Bank Board on a case-by-case basis. Section XII of the Policies specifically authorizes exemptions or waivers of portions of the Policies that are not statutorily required:

“The Infrastructure Bank retains the right to entertain exemptions or waivers to those portions of the policies and procedures not required by law.”

From time to time, a waiver has been requested and received when the I-Bank has been approached by a potential borrower requesting that the I-Bank issue bonds for a project that in part falls within the authority of another State conduit issuer. One example is a project for a non-profit organization that contained a medical clinic, but was principally a social welfare facility project. The medical clinic portion could be financed by the California Health Facilities Financing Authority (CHFFA), but not the social welfare facility portion. To split the financing into two small bond issuances would have been unnecessarily costly to the borrower. In the interest of assisting the project sponsor, CHFFA agreed to not object to the I-Bank’s issuance of bonds to finance the entire project. I-Bank staff presented the financing for the project to the I-Bank Board for consideration with an explanation of why the project is being proposed for financing by the I-Bank and not the CHFFA, and the I-Bank Board’s approval of the financing constituted a waiver of the Section I.B. Policy.

Recently two situations have suggested that there might be additional requests for waivers of the Section I.B. Policy in the future.

- The Section I.B. Policy does not address the possibility of the expansion of the authority of another State conduit issuer to permit that issuer to finance projects that may also be financed by the I-Bank. For example, in 2009 the Legislature adopted SB 832 expanding the types of projects that may be financed by the California Pollution Control Financing Authority (CPCFA) to include facilities for the furnishing of water. The I-Bank has long been able to finance privately owned water treatment and distribution facilities as economic development facilities.<sup>3</sup> An application from Poseidon Resources to finance a water desalination facility in Carlsbad, California, is currently pending with I-Bank staff.

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<sup>3</sup> “Water treatment and distribution” facilities are also financeable by public entities as a public development facility, but, as noted above, public development facility bonds do not fall within the scope of the Policies.



As a result of this recent change to the CPCFA statute, the I-Bank Board will have to waive the Section I.B. Policy in order for I-Bank to issue bonds to finance this project, refunding bonds for this project, or bonds to finance other desalination projects.

- The Section I.B. Policy does not address the possibility of the creation of a new State conduit bond issuer to finance projects that may also be financed by the I-Bank. For example, in 2009, the Legislature created the California Transportation Financing Authority within the State Treasurer's Office. This authority is authorized to finance highway, public street, rail, bus or related facilities for a variety of public entities. These projects can be financed by the I-Bank as public development facilities, subject to the adoption of appropriate criteria priorities and guidelines (see footnote 1). However, in the event the transaction is structured so that the project is defined as an economic development facility, such as a toll road or a rail facility owned and operated by a non-governmental borrower (as is common in public-private partnerships), the I-Bank Board may be required to waive the Section I.B. Policy in order to issue bonds for that project.

**Limitations of the Current Process.** The process of seeking approval of another State conduit issuer and relying on the I-Bank Board's willingness to waive the Section I.B. Policy on a case-by-case basis does result in coordination of the interests of the I-Bank and other State conduit issuers. However, it has not always operated in the best interest of applicants. Requiring an applicant to proceed through the application process before receiving final confirmation that the I-Bank Board is willing to waive the Section I.B. Policy puts an applicant in the difficult situation of having to pay an application fee and proceeding with the I-Bank's review process in the face of a stated policy that requires waiver. On more than one occasion an applicant or potential applicant, upon learning of this built-in uncertainty in the I-Bank process, has taken the option of going to a non-State conduit issuer. Potential applicants for I-Bank financial assistance deserve clarity on this point prior to proceeding through the I-Bank application process.

**PROPOSED AMENDMENTS:** I-Bank staff recommends that the Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities be amended to set forth an overarching policy of avoiding duplication, inefficiency, market confusion and poor public policy outcomes that would result from State conduit revenue bond issuers competing to issue bonds to finance the same or similar projects, and establish a process for meeting that policy.

The recommended process includes clarification that the I-Bank may issue bonds when the financing includes a refunding of bonds issued by or to otherwise finance a project previously financed by the I-Bank or a predecessor entity to the I-Bank. In all other instances where the I-Bank receives an application or inquiry from a potential applicant



for financing of an economic development facility project that I-Bank staff has reason to believe is statutorily authorized to be financed by another State conduit issuer, the proposed process requires the I-Bank Executive Director to contact the executive director of the other State conduit issuer to discuss which issuer is the most appropriate to issue bonds to finance the project. The I-Bank Executive Director is then directed to consider the following in determining whether to recommend the project to the Board:

- a. If the I-Bank or the other State conduit revenue bond issuer is statutorily authorized to finance only a portion of the proposed project, which issuer is statutorily authorized to finance the greater portion of the proposed project.
- b. Whether the project is of a type previously financed by either the I-Bank or the other State conduit revenue bond issuer (i.e., whether I-Bank staff or staff of the other State conduit revenue bond issuer has developed experience and expertise in assessing and advising on a similar project or projects).
- c. The staffing capacity of the I-Bank and the other State conduit revenue bond issuer, and the respective experience of available staff to effectively and efficiently assess and advise on the project.

The proposed process further directs the Executive Director of the I-Bank to inform the Board when a project is being recommended pursuant to this policy and process.

The proposed amendments are reflected in the “Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities” attached hereto as **Attachment 1**.

Staff believes that these proposed amendments would address the challenges that have arisen and are expected to arise in the future from time-to-time in implementing the Section I.B. Policy.

**RECOMMENDATION:** I-Bank staff recommends approval of Resolution 10-28 approving the Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities attached thereto.



## ATTACHMENT 1 – PROPOSED AMENDED POLICIES

### CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

#### Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities

Note: All capitalized terms have the same meaning as contained in Government Code Section 63000 et seq.

##### I. Eligible Projects

- A. Eligible projects include real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.
- B. ~~The Infrastructure Bank will not issue Bonds for projects that another State of California conduit issuer was specifically created to finance. For example, the Infrastructure Bank will not issue Bonds for health facilities that are eligible for financing from the California Health Facilities Financing Authority or pollution control projects that are eligible for financing from the California Pollution Control Financing Authority. It is the policy of the Infrastructure Bank to avoid the duplication, inefficiency, market confusion, and poor public policy outcomes that would result from State of California conduit revenue bond issuers competing to issue bonds to finance the same project or similar projects. In recognition of this policy:~~
  1. The Infrastructure Bank may issue bonds to finance an economic development facility project that is ~~not~~ statutorily authorized to be financed through bonds issued by another State of California conduit revenue bond issuer if the project or a portion thereof has been previously financed by bonds issued by the Infrastructure Bank or a predecessor of the Infrastructure Bank (as of the date of the adoption of this policy, the former California Economic Development Financing Authority) and the proposed financing includes a refunding of those bonds or to otherwise finance the previously financed project.
  2. Upon receipt of an application or inquiry from a potential applicant for financing of an economic development facility project that Infrastructure Bank staff has reason to believe is statutorily authorized to be financed by bonds issued by another State conduit revenue bond issuer, and which does



not fall within the scope of subparagraph 1. above, the Infrastructure Bank Executive Director shall contact the Executive Director of the other State conduit revenue bond issuer to discuss which issuer is the most appropriate to issue bonds to finance the project. Following that discussion, after taking into consideration the information shared by the Executive Director of the other State conduit revenue bond issuer, the Executive Director of the Infrastructure Bank shall determine whether to recommend the issuance of bonds for such economic development project to the Infrastructure Bank Board of Directors.

3. In reaching the determination under sub-paragraph 2. above, the Executive Director shall consider:
  - a. If either the Infrastructure Bank or the other State conduit revenue bond issuer is statutorily authorized to finance only a portion of the proposed project, which issuer is statutorily authorized to finance the greater portion of the proposed project.
  - b. Whether the project is of a type previously financed by either the Infrastructure Bank or the other State conduit revenue bond issuer (i.e., whether Infrastructure Bank staff or staff of the other State conduit revenue bond issuer has developed experience and expertise in assessing and advising on a similar project or projects).
  - c. The staffing capacity of the Infrastructure Bank and the other State conduit revenue bond issuer, and the respective experience of available staff to effectively and efficiently assess and advise on the project.

The Executive Director shall inform the Board of Directors when a project is recommended for financing by Infrastructure Bank staff pursuant to this Section I.B

- C. The Infrastructure Bank's normal policy will be to issue Bonds which will bear a long-term rating of at least an "A3" from Moody's Investors Service (Moody's), or and "A-" from Standard & Poor's (S&P) or Fitch Ratings, Inc. (Fitch), and/or a short-term rating of at least a "VMIG 1" or "P-1" from Moody's, or "SP-1" or "A-1" from S&P, or "F1" from Fitch, based either on the credit of the Participating Party or on a credit enhancement from a bank, insurance company or other guarantor acceptable to the Infrastructure Bank. The Infrastructure Bank may consider a waiver of the minimum rating requirement based on special circumstances, or a waiver pursuant to subsection D.
- D. When the Infrastructure Bank agrees to waive the requirement for a credit rating stated in paragraph (C), the Participating Party will be required to use a private placement or limited underwritten offering, subject to the following additional conditions:
  1. **Sophisticated Investor.** The investor(s) will be required to sign a "sophisticated investor" letter acceptable to the Infrastructure Bank. Each investor must be a qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an



equivalent sophisticated investor with a demonstrated understanding of the risks associated with the municipal market, acceptable to the Infrastructure Bank.

2. **Resale Limitations.** Depending on the circumstances of the proposed sale, the Infrastructure Bank may require conditions for the resale of the Bonds after initial issuance.
3. **Minimum Denomination.** The Infrastructure Bank will require a minimum bond denomination of at least \$100,000 on private placements or limited underwritten offerings; denominations may be higher depending on the circumstances of the sale.

## II. **Application Content**

- A. **Inducement Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a resolution of preliminary intent in connection with the issuance of conduit revenue bonds, shall submit a completed project application as provided in II.B. below or may submit a pre-application that includes the following information:
  1. Name, address, and legal structure of the Participating Party;
  2. Name, address, telephone number, fax number, and e-mail address, if available, of the principal contact person for the application;
  3. Description of Participating Party's business or mission and objectives;
  4. Description, purpose and location of project;
  5. Amount of financing requested;
  6. Proposed sources and uses of funds for the project;
  7. Description of whether the project involves a relocation from another California location. If yes, explain the reasons for the relocation;
  8. Description of public benefits of the project;
  9. Name, address, telephone number, fax number, and e-mail address of proposed bond counsel, underwriter/private placement agent, financial advisor, and credit enhancement provider.
  10. Attachments: highest level of financial statements available for the past three years; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank.
- B. **Final Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a final resolution authorizing the sale of Bonds for a project, shall submit or shall have submitted in connection with the adoption of a resolution of preliminary intent, a completed project application that includes the following information:
  1. Name, address, and legal structure of the Participating Party;
  2. Name, address, telephone number, fax number, and e-mail address of the principal contact person for the application;
  3. Names of officers of the Participating Party;
  4. History and description of the Participating Party;
  5. Location of project to be financed;



6. Present or proposed owner of the project site, including name and address of legal owner and terms and nature of occupancy;
7. Description of the purpose and functions of the project to be financed;
8. Description of whether the project involves a relocation from another California location. If yes, describe why the relocation is necessary;
9. Amount of financing requested;
10. Summary of the estimated cost of the project, including a sources and uses statement;
11. Amount of other public and private funds leveraged by the Bond financing;
12. Comprehensive summary of all public benefits of the project;
13. Description of any past, present or potential controversy connected with the project or the financing.
14. Description of the structure and type of the proposed financing, including whether it is fixed or variable rate, the expected maturity of the proposed debt, description of the credit enhancement, and the issue type such as public offering or private placement;
15. Expected credit rating;
16. Proposed date for bond issuance;
17. Name, address, telephone number, fax number, and e-mail address of all proposed finance team members, including bond counsel, underwriter/private placement agent, underwriter/private placement counsel, remarketing agent, financial advisor, Participating Party counsel, credit enhancement provider, trustee, and other participants.
18. Any other information required by the California Debt Limit Allocation Committee, or any other entity whose approval is needed to issue the Bonds.
19. A senior organization official with primary responsibility for financing the project must sign the following certification: "The undersigned hereby certifies that I am authorized to execute this application on behalf of the [Participating Party] and that to the best of my knowledge, the application, including all exhibits and attachments, is complete, true, and accurate."
20. Attachments: commitment letter for credit enhancement, if available; highest level of financial statements available for the past three years, if not previously submitted; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank, if not previously submitted.

### III. **Application Process**

- A. **Inducement Resolutions.** A Participating Party must submit one original and two copies of a pre-application or project application not later than 4:00 P.M. on the 15th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt an inducement resolution.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the pre-application indicating whether it is complete. If the pre-



application is complete, the letter shall state that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the pre-application is not complete, the letter shall specify the deficiencies and provide the Participating Party with one business day in which to correct the deficiencies. If the required information is received within one business day, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within one business day, Infrastructure Bank staff shall fax a letter to the Participating Party stating that the pre-application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another pre-application for consideration at a subsequent Infrastructure Bank meeting.

Prior to the adoption of an inducement resolution, Infrastructure Bank staff shall notify the city manager, county administrator or other appropriate local official where a project is located, of the receipt of an application for financing and the date of the meeting at which an inducement resolution is to be considered.

- B. **Final Resolutions.** A Participating Party must submit one original and two copies of a project application not later than 4:00 P.M. on the 30th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt a final resolution authorizing the sale of bonds.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the project application indicating whether it is complete. If the application is complete, the letter shall state that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the application is not complete, the letter shall specify the deficiencies and provide the Participating Party with four business days in which to correct the deficiencies. If the required information is received within four business days, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within four business days, Infrastructure Bank staff shall fax a letter to the Participating Party stating that the application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another project application for consideration at a subsequent Infrastructure Bank meeting.

- C. Inclusion of an item on the agenda means that it will be considered by the Infrastructure Bank; it does not necessarily mean that the Infrastructure Bank will adopt the requested resolution.



#### IV. **Public Hearing**

- A. All federal tax-exempt Bonds will be subject to a noticed public hearing known as a Tax Equity and Financial Responsibility Act (TEFRA) hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended.

#### V. **Relocation**

- A. It is not the intent of the Infrastructure Bank to issue Bonds to facilitate the relocation of a project from one jurisdiction of the state to another without substantial justification. The Infrastructure Bank will carefully weigh the overall public benefits created against the detriment to the community from which the project is relocated.
- B. Participating Parties that are relocating must describe, in their application, their efforts to work with the current community before abandoning the facility. The Participating Party should provide a timely notice to the city or county losing a facility of its intent to move, so that the jurisdiction will have time to initiate efforts to replace the jobs lost. An acknowledgment of the relocation from the city or county being vacated will also be requested.

#### VI. **Public Interest Criteria**

- A. No Bonds shall be issued by the Infrastructure Bank unless the Infrastructure Bank shall have first determined that the financing meets the following public interest criteria:
  - 1. The financing is for a project or a use in the State of California.
  - 2. The Participating Party is capable of meeting obligations incurred under relevant agreements relating to the Bonds issued by the Bank.
  - 3. Payments to be made under applicable financing documents are adequate to pay the current expenses of the Bank in connection with the financing and to make payments on the Bonds.
  - 4. The proposed financing is appropriate for the specific project.
  - 5. The project is consistent with any existing local or regional comprehensive plan.
- B. The Infrastructure Bank requires a defined public benefit before it is willing to act as a conduit issuer for tax-exempt or taxable bonds. The following represent supplemental public interest criteria required for each type of Participating Party:
  - 1. **Industrial development bonds.** The issuance of bonds must demonstrate clear economic benefit to the community. Typically, this is shown by the creation of new jobs, retention of existing jobs, but other economic benefits may be considered. The Participating Party must also comply with the policies, procedures and public interest criteria of the California Debt Limit Allocation Committee.



2. **501(c)(3)bonds.** Projects must provide clear evidence of a defined public benefit, such as provision of additional services, the provision of additional educational, scientific, social or cultural resources to the community or the State, or the creation or retention of jobs.
  3. **Exempt facility bonds.** Project must show clear economic, environmental or other public benefits to the State or the community such as increased local revenues, improvements to infrastructure, expansion of the State or local economy, job creation or retention, or other specific local goals and objectives.
  4. **Public jurisdiction.** Projects must demonstrate an enhancement of the infrastructure, or the economic, social or cultural quality of life for residents in the community or the State.
- C. Bonds which refund previously issued Bonds will not be subject to the supplemental public interest criteria listed in paragraph (B) above.

VII. **Contractor Certification**

- A. Any Participating Party that utilizes bond proceeds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.
- B. All public works projects shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

VIII. **Finance Team Approval**

- A. The Infrastructure Bank shall have final approval of all finance team members, and consistent with State law, the State Treasurer shall have final approval of the underwriter/placement agent.

IX. **State Treasurer as Agent of Sale**

- A. Sale of the Infrastructure Bank's bonds shall be coordinated by the State Treasurer in accordance with Government Code Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the final resolution authorizing the sale of bonds, unless the Board adopts a resolution extending the 90-day period.

X. **Bonds Not a Liability of the State**

- A. Bonds issued by the Infrastructure Bank do not constitute a debt or liability of the State or of any political subdivision thereof, other than the Infrastructure Bank or a special purpose trust, and do not constitute a pledge of the full faith and credit of the State or any of its political subdivisions, other than the Infrastructure Bank or special purpose



trust, but are payable solely from the funds provided therefor under the Act and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution.

- B. All the bonds shall contain on the face thereof a statement to the following effect:  
“Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond.”

XI. **Bank Indemnity**

- A. Each Participating Party will be required, as part of bond documentation, to provide indemnities to the Infrastructure Bank, their members, officers, agents and employees.

XII. **Other**

- A. The Infrastructure Bank retains the right to entertain exemptions or waivers to those portions of the policies and procedures not required by law. If an exemption or waiver is requested of the Infrastructure Bank, additional time may be required for the application process.



**ATTACHMENT 2 – 1999 STAFF REPORT AND RESOLUTION 99-03**



**AGENDA ITEM NO. V**  
**January 26, 1999**

**STAFF SUMMARY**

**ISSUE:** Section 63044 of the Government Code requires the California Infrastructure and Economic Development Bank to establish procedures for the expeditious review of applications for the issuance or approval of conduit revenue bonds to finance Economic Development Facilities.

The proposed policies and procedures for the review of applications for the issuance of conduit revenue bonds to finance Economic Development Facilities are attached hereto as Attachment A.

**RECOMMENDATION:** Staff recommends approval of Resolution 99-03, establishing the policies and procedures for approving conduit revenue bonds for Economic Development Facilities.



**RESOLUTION 99-03**

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC  
DEVELOPMENT BANK ESTABLISHING POLICIES AND PROCEDURES FOR  
CONDUIT REVENUE BOND FINANCING FOR ECONOMIC DEVELOPMENT  
FACILITIES**

**WHEREAS**, the California Infrastructure and Economic Development Bank (the "Bank") exists within state government for the purpose of administering the provisions of the Bergeson-Peace Infrastructure and Economic Development Bank Act (the "Act"); and

**WHEREAS**, the Act authorizes the Bank to issue conduit revenue bonds to provide financing for Economic Development Facilities; and

**WHEREAS**, the Act requires the Bank to establish procedures for the expeditious review of applications for the issuance of bonds to finance Economic Development Facilities.

**NOW, THEREFORE**, the Board of Directors of the California Infrastructure and Economic Development Bank does resolve as follows:

**Section 1.** The policies and procedures for the expeditious review of applications for the issuance of bonds to finance Economic Development Facilities attached hereto as Attachment A are hereby approved.

**Section 2.** This Resolution shall take effect from and after its adoption.

**PASSED, APPROVED, AND ADOPTED** at a meeting of the California Infrastructure and Economic Development Bank on January 26, 1999 by the following vote:

AYES:	Hatamiya, Angelides, Gage
NOES:	None
ABSENT	None
ABSTAIN:	None

  
\_\_\_\_\_  
Lon S. Hatamiya, Chair

Attest:

  
\_\_\_\_\_  
Blake Fowler, Secretary of the Board of Directors



Attachment A

## **CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**

### **Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities**

Note: All capitalized terms have the same meaning as contained in Government Code Section 63000 *et seq.*

#### **I. Eligible Projects**

- A. Eligible projects include real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.
- B. The Infrastructure Bank will not issue Bonds for projects that another State of California conduit issuer was specifically created to finance. For example, the Infrastructure Bank will not issue Bonds for health facilities that are eligible for financing from the California Health Facilities Financing Authority or pollution control projects that are eligible for financing from the California Pollution Control Financing Authority.
- C. The Infrastructure Bank's normal policy will be to issue Bonds which will bear a long-term rating of at least "A" from Standard & Poor's or "A2" from Moody's, and/or a short-term rating of at least "SP-1" from Standard & Poor's or "MIG-1/VMIG-1" from Moody's, based either on the credit of the Participating Party or on a credit enhancement from a bank, insurance company or other guarantor acceptable to the Infrastructure Bank. The Infrastructure Bank may consider a waiver of the minimum rating requirement based on special circumstances.
- D. When the Infrastructure Bank agrees to waive the requirement for a credit rating stated in paragraph (C) to issue a less than "A" rated bond, the Participating Party will be required to use a private placement or limited underwritten offering, subject to the following additional conditions:
  - 1. **Sophisticated Investor.** The investor(s) will be required to sign a "sophisticated investor" letter acceptable to the Infrastructure Bank. Each investor must be a qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an equivalent sophisticated investor with a demonstrated understanding of the risks associated with the municipal market, acceptable to the Infrastructure Bank.
  - 2. **Resale Limitations.** Depending on the circumstances of the proposed sale, the Infrastructure Bank may require conditions for the resale of the Bonds after initial issuance.



3. **Minimum Denomination.** The Infrastructure Bank will require a minimum bond denomination of at least \$100,000 on private placements or limited underwritten offerings; denominations may be higher depending on the circumstances of the sale.

## II. Application Content

- A. **Inducement Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a resolution of preliminary intent in connection with the issuance of conduit revenue bonds, shall submit a completed project application as provided in II.B. below or may submit pre-application that includes the following information:
  1. Name, address, and legal structure of the Participating Party;
  2. Name, address, telephone number, fax number, and e-mail address, if available, of the principal contact person for the application;
  3. Description of Participating Party's business or mission and objectives;
  4. Description, purpose and location of project;
  5. Amount of financing requested;
  6. Proposed sources and uses of funds for the project;
  7. Description of whether the project involves a relocation from another California location. If yes, explain the reasons for the relocation;
  8. Description of public benefits of the project;
  9. Name, address, telephone number, fax number, and e-mail address of proposed bond counsel, underwriter/private placement agent, financial advisor, and credit enhancement provider.
  10. Attachments: highest level of financial statements available for the past three years; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank.

Prior to the adoption of an inducement resolution for conduit revenue bond financing, Infrastructure Bank staff shall notify the city manager, county administrator or other appropriate local official where a project is to be located of the receipt of an application for financing and the date of the meeting at which an inducement resolution is to be considered.

- B. **Final Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a final resolution authorizing the sale of Bonds for a project, shall submit or shall have submitted in connection with the adoption of a resolution of preliminary intent, a completed project application that includes the following information:
  1. Name, address, and legal structure of the Participating Party;
  2. Name, address, telephone number, fax number, and e-mail address of the principal contact person for the application;
  3. Names of officers of the Participating Party;
  4. History and description of the Participating Party;
  5. Location of project to be financed;



6. Present or proposed owner of the project site, including name and address of legal owner and terms and nature of occupancy;
7. Description of the purpose and functions of the project to be financed;
8. Description of whether the project involves a relocation from another California location. If yes, describe why the relocation is necessary;
9. Amount of financing requested;
10. Summary of the estimated cost of the project, including a sources and uses statement;
11. Amount of other public and private funds leveraged by the Bond financing;
12. Comprehensive summary of all public benefits of the project;
13. Description of the structure and type of the proposed financing, including whether it is fixed or variable rate, the expected maturity of the proposed debt, description of the credit enhancement, and the issue type such as public offering or private placement;
14. Expected credit rating;
15. Proposed date for bond issuance;
16. Name, address, telephone number, fax number, and e-mail address of all proposed finance team members, including bond counsel, underwriter/private placement agent, underwriter/private placement counsel, remarketing agent, financial advisor, Participating Party counsel, credit enhancement provider, trustee, and other participants.
17. Any other information required by the California Debt Limit Allocation Committee, or any other entity whose approval is needed to issue the Bonds.
18. A senior organization official with primary responsibility for financing the project must sign the following certification: "The undersigned hereby certifies that I am authorized to execute this application on behalf of the [Participating Party] and that to the best of my knowledge, the application, including all exhibits and attachments, is complete, true, and accurate."
19. Attachments: commitment letter for credit enhancement, if available; highest level of financial statements available for the past three years if not previously submitted; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank if not previously submitted.

### **III. Application Process**

- A. **Inducement Resolutions.** A Participating Party must submit one original and two copies of a pre-application not later than 4:00 P.M. on the 15th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt an inducement resolution.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the pre-application indicating whether it is complete. If the pre-application is complete, the letter shall state that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the pre-application is not complete, the letter shall specify the deficiencies and provide the Participating Party with one business day in which to correct the



deficiencies. If the required information is received within one business day, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within one business day, Infrastructure Bank staff shall fax a letter to the Participating Party stating that the pre-application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another pre-application for consideration at a subsequent Infrastructure Bank meeting.

- B. **Final Resolutions.** A Participating Party must submit one original and two copies of a project application not later than 4:00 P.M. on the 20th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt a final resolution authorizing the sale of bonds.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the project application indicating whether it is complete. If the application is complete, the letter shall state that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the application is not complete, the letter shall specify the deficiencies and provide the Participating Party with four business days in which to correct the deficiencies. If the required information is received within four business days, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within four business days, Infrastructure Bank staff shall fax a letter to the Participating Party stating that the application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another project application for consideration at a subsequent Infrastructure Bank meeting.

- C. Inclusion of an item on the agenda means that it will be considered by the Infrastructure Bank; it does not necessarily mean that the Infrastructure Bank will adopt the requested resolution.

#### IV. **Public Hearing**

- A. All federal tax-exempt Bonds will be subject to a noticed public hearing known as a Tax Equity and Financial Responsibility Act (TEFRA) hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended.

#### V. **Relocation**

- A. It is not the intent of the Infrastructure Bank to issue Bonds to facilitate the relocation of a project from one jurisdiction of the state to another without substantial justification. The Infrastructure Bank will carefully weigh the overall public benefits created against the detriment to the community from which the project is relocated.



- B. Participating Parties that are relocating must describe, in their application, their efforts to work with the current community before abandoning its existing facility. The Participating Party should provide a timely notice to the city or county losing a facility of its intent to move, so that the jurisdiction will have time to initiate efforts to replace the jobs lost. An acknowledgment of the relocation from the city or county being vacated will also be requested.

#### VI. Public Interest Criteria

- A. No Bonds shall be issued by the Infrastructure Bank unless the Infrastructure Bank shall have first determined that the financing meets the following public interest criteria:
  - 1. The financing is for a project or a use in the State of California.
  - 2. The Participating Party is capable of meeting obligations incurred under relevant agreements relating to the Bonds issued by the Bank.
  - 3. Payments to be made under applicable financing documents are adequate to pay the current expenses of the Bank in connection with the financing and to make payments on the Bonds.
  - 4. The proposed financing is appropriate for the specific project.
  - 5. The project is consistent with any existing local or regional comprehensive plan.
- B. The Infrastructure Bank requires a defined public benefit before it is willing to act as a conduit issuer for tax-exempt or taxable bonds. The following represent supplemental public interest criteria required for each type of Participating Party:
  - 1. **Industrial development bonds.** The issuance of bonds must demonstrate clear economic benefit to the community. Typically, this is shown by the creation of new jobs, retention of existing jobs, but other economic benefits may be considered. The Participating Party must also comply with the policies, procedures and public interest criteria of the California Debt Limit Allocation Committee.
  - 2. **501(c)(3)bonds.** Projects must provide clear evidence of a defined public benefit, such as provision of additional services, the provision of additional educational, scientific, social or cultural resources to the community or the State, or the creation or retention of jobs.
  - 3. **Exempt facility bonds.** Project must show clear economic, environmental or other public benefits to the State or the community such as increased local revenues, improvements to infrastructure, expansion of the State or local economy, job creation or retention, or other specific local goals and objectives.
  - 4. **Public jurisdiction.** Projects must demonstrate an enhancement of the infrastructure, or the economic, social or cultural quality of life for residents in the community or the State.
- C. Bonds which refund previously issued Bonds will not be subject to the supplemental public interest criteria listed in paragraph (B) above.



**VII. Contractor Certification**

- A. Any Participating Party that utilizes bond proceeds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.
- B. All public works projects shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

**VIII. Finance Team Approval**

- A. The Infrastructure Bank shall have final approval of all finance team members, and consistent with State law, the State Treasurer shall have final approval of the underwriter/private placement agent.

**IX. State Treasurer as Agent of Sale**

- A. Sale of the Infrastructure Bank's bonds shall be coordinated by the State Treasurer in accordance with Government Code Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the final resolution authorizing the sale of bonds, unless the Board adopts a resolution extending the 90-day period.

**X. Bonds Not a Liability of the State**

- A. Bonds issued by the Infrastructure Bank do not constitute a debt or liability of the state or of any political subdivision thereof, other than the Infrastructure Bank or a special purpose trust, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the Infrastructure Bank or special purpose trust, but are payable solely from the funds provided therefor under the Act and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution.
- B. All the bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

**XI. Bank Indemnity**

- A. Each Participating Party will be required, as part of bond documentation, to provide indemnities to the Infrastructure Bank, their members, officers, agents and employees.

**XII. Other**

- A. The Infrastructure Bank retains the right to entertain exemptions or waivers to those portions of the policies and procedures not required by law. If an exemption or waiver is requested of the Infrastructure Bank, additional time may be required for the application process.